

substantially diminishes A's risk of loss from holding the X stock, the X stock and the equity swap are offsetting positions within the meaning of section 1092(c). The remaining question is whether these are positions with respect to personal property.

(ii) *The swap leg as a position with respect to personal property.* The equity swap contract is a position with respect to personal property as defined by section 1092(d)(1). Although section 1092(d)(3)(A) generally excludes stock from the definition of personal property, this exclusion does not apply to interests in stock. Therefore, stock can be personal property when testing whether an interest in the stock, other than a direct interest in, or a short sale of, the stock, is a position with respect to personal property. Because the equity swap contract is an interest in actively traded stock, the equity swap contract is a position with respect to personal property.

(iii) *The stock leg as personal property.* As described below, ownership of the X stock is also a position with respect to personal property.

(A) *The rule of section 1092(d)(3)(B)(i)(II).* Under section 1092(d)(3)(B)(i)(II) and paragraph (a)(1)(ii) of this section, stock is not excluded from the definition of personal property if it is part of a straddle at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock).

(B) *The swap as a position with respect to substantially similar or related property (other than stock) for purposes of section 1092(d)(3)(B)(i)(II).* Under paragraph (b) of this section, the equity swap contract is a position with respect to property that is substantially similar or related to the X stock because A is entitled to payments under the equity swap contract that are attributable to the decline in the value of the X stock. See § 1.246-5(c)(7). Under section 1092(d)(3)(B)(i)(II) and paragraph (c) of this section, the equity swap contract is a position with respect to substantially similar or related property (other than stock) because it is not direct ownership of stock or a short sale of stock.

(C) *The stock as part of a straddle for purposes of the test of section 1092(d)(3)(B)(i)(II).* In determining whether the X stock is part of a straddle for purposes of the test of section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section, section 1092(d)(3)(C) treats the X stock as personal property. Because the stock is treated as personal property for this purpose, because the equity swap contract is a position with respect to personal property (see paragraph (d)(2)(ii) of this section), and because the X stock and the equity swap contract are offsetting positions (see paragraph (d)(2)(i) of this section), the straddle test in section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section is satisfied. Accordingly, under section 1092(d)(3)(B), the stock is personal property for all purposes of section 1092.

(iv) *The two legs as a straddle.* Because ownership of the X stock and the equity swap contract are offsetting positions with respect to personal property, the X stock and the equity swap contract are a straddle to A within the meaning of section 1092(c)(1).

(e) *Effective dates*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to positions established on or after May 1, 1995.

(2) *Special rules for substantially similar or related property*—(i) *In general.* Paragraph (b) of this section applies to positions established on or after March 17, 1995.

(ii) *Special rule for certain straddles.* Paragraph (b) of this section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(A) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(B) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 95-10755 Filed 5-1-95; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

#### North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of statutory provisions pertaining to the North Dakota program's Small Operator Assistance Program and individual civil penalties. The amendment is intended to revise the North Dakota program to be

consistent with the corresponding Federal regulations and SMCRA.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., June 1, 1995. If requested, a public hearing on the proposed amendment will be held on May 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on May 17, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. "B" Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776  
North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, ND 58505-0165, Telephone: (701) 224-4092

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-5776.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

#### II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Amendment number XXII, Administrative Record No. ND-W-01). North Dakota submitted the proposed amendment in response to the required program amendment at 30 CFR 934.16(y) and in response to an

inconsistency with SMCRA that was identified in a July 22, 1994, rulemaking action (59 FR 37426). The provisions of the North Dakota Century Code (NDCC) that North Dakota proposes to revise or add are: NDCC 38–14.1–37(4) [SOAP, reimbursement of costs], and NDCC 38–12.1–08 [coal exploration, civil and criminal penalties].

Specifically, North Dakota proposes to revise NDCC 38–14.1–37(4) to require an operator who has received SOAP assistance under subsection 3 of the provision (training in the preparation of permit applications and compliance with the regulatory program) to reimburse the commission for the cost of the services under certain circumstances. North Dakota also proposes to revise NDCC 38–12.1–08(2) to allow the assessment of individual civil penalties only for willful specified violations. Finally, North Dakota proposes to add at NDCC 38–12.1–08(3) a new provision that any corporation or person who controls the activity of a corporation who violates NDCC Chapter 38–12.1 or any permit condition or rule implementing that chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

#### 1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

#### 2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., in May 17, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one

requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

#### 3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

### IV. Procedural Determinations

#### 1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Service Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

#### 4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### 5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1995.

**Peter A. Rutledge,**

*Acting Assistant Director, Western Support Center.*

[FR Doc. 95–10776 Filed 5–1–95; 8:45 am]

BILLING CODE 4310–05–M